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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
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10 CALIFORNIA BOARD SPORTS, INC.,  
11 a California Corporation,  
12  
13 vs.  
14 MARK A. GRIFFIN, an individual; G-  
BAGS, LLC, a Pennsylvania limited  
15 liability company,  
16  
17 Defendants.

CASE NO. 10cv1849 WQH (WVG)

**ORDER**

HAYES, Judge:

16 The matters before the Court are the Request for Appointment of Counsel for Defendant  
17 G-Bags, LLC filed by Defendant Mark A. Griffin (“Griffin”) (ECF No. 19), the Motion for a  
18 Stay of All Proceedings (ECF No. 21) filed by Griffin, and the Motion for Dismissal of  
19 Plaintiff’s Complaint Due to Lack of Personal Jurisdiction filed by Griffin (ECF No. 23).  
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**BACKGROUND**

21 On September 3, 2010, Plaintiff California Board Sports, Inc. initiated this action by  
22 filing a Complaint and filed an Amended Complaint on September 29, 2010, alleging claims  
23 of false designation of origin and false representation, federal trademark infringement, state  
24 trademark infringement and unfair competition, and common law trademark infringement and  
25 unfair competition against Defendants Mark A. Griffin and G-Bags, LLC. (ECF Nos. 1, 8).  
26 On October 14, 2010, Defendant Mark Griffin, filed a Motion requesting an extension of time  
27 to respond to the Complaint for himself and G-Bags, LLC, a Pennsylvania limited liability  
28 company. (ECF No. 13). The Court granted Defendant Griffin an extension of time to

1 respond to the Complaint and stated: “To date, there has been no appearance in this case by  
 2 any attorney for either Defendant Griffin or G-Bags, LLC.” (ECF No. 18 at 1 (citing Civ. L.R.  
 3 83.3(k) which provides: “Only natural persons representing their individual interests in propria  
 4 persona may appear in court without representation by an attorney .... All other parties,  
 5 including corporations, partnerships and other legal entities, may appear in court only through  
 6 an attorney ....”)).

7 On November 12, 2010, Defendant Griffin filed a Request for Appointment of Counsel  
 8 for Defendant G-Bags, LLC. (ECF No. 19). On November 16, 2010, Defendant Griffin filed  
 9 a Motion for a Stay of All Proceedings (ECF No. 21) and a Motion for Dismissal of Plaintiff’s  
 10 Complaint Due to Lack of Personal Jurisdiction (ECF No. 23).

11 On December 6, 2010, Plaintiff filed an Opposition to Griffin’s Motion to Dismiss Due  
 12 to Lack of Personal Jurisdiction and Motion to Stay Proceedings. (ECF No. 25).

### 13 DISCUSSION

#### 14 I. Motion for Appointment of Counsel for Defendant G-Bags, LLC

15 Defendant Mark Griffin, who is proceeding pro se, requests appointment of counsel for  
 16 Defendant G-Bags, LLC, a limited liability company.

17 Generally, a person does not have a right to counsel in a civil case. *See Campbell v.*  
 18 *Burt*, 141 F.3d 927, 931 (9th Cir.1998); *Ivey v. Board of Regents of the University of Alaska*,  
 19 673 F.2d 266, 269 (9th Cir.1982). A federal court does not have the authority to “make  
 20 coercive appointments of counsel.” *Mallard v. United States District Court*, 490 U.S. 296, 310  
 21 (1989). A court has discretion to appoint counsel for indigent civil litigants pursuant to 28  
 22 U.S.C. § 1915(e)(1). However, appointment of counsel under 28 U.S.C. § 1915(e)(1) does  
 23 not apply to “artificial entities.” *Rowland v. California Men's Colony, Unit II Men's Advisory*  
 24 *Council*, 506 U.S. 194, 211 (1993). In addition: “It has been the law for the better part of two  
 25 centuries ... that a corporation may appear in the federal courts only through licensed counsel.”  
 26 *Id.* at 201-02. Therefore, Defendant Mark Griffin may not bring this Motion on behalf of  
 27 Defendant G-Bags, LLC, and even if he could the Motion is **DENIED**.

**II. Motion to Dismiss Plaintiff's Complaint Due to Lack of Personal Jurisdiction**

Defendant Mark Griffin seeks to dismiss Plaintiff's Complaint due to lack of personal jurisdiction or, alternatively, seeks a transfer of venue to the Eastern District of Pennsylvania. Griffin has submitted an affidavit and states that he has never been a resident of California, he has not engaged in business transactions in California, he does not conduct activity in California, and the only contact he has had with Plaintiff were emails and phone conversations in an attempt to settle this action.

Plaintiff California Board Sports, Inc. contends that Defendant Griffin has advertised his products for sale on his website [www.g-bags.com](http://www.g-bags.com) as well as via Facebook, Twitter, YouTube, Merchant Circle, Super Pages, and Yellow Pages. Plaintiff contends that by doing so, Defendant Griffin has "clearly marketed and made his products available for purchase by California customers." (ECF No. 25 at 2). Plaintiff contends that Defendant Griffin has sold products in California. Plaintiff contends that prior to this lawsuit, Defendant Griffin, through Ohio counsel, sent Plaintiff a cease and desist letter regarding Plaintiff's use of its trademark G BAGS.

Plaintiff has submitted the abstract of title for the trademark registration of G-BAGS which states that on June 8, 2007, Defendant Mark Griffin applied for the trademark and on March 18, 2008, Defendant Mark Griffin obtained the trademark. Plaintiff has also submitted the assignment of abstract of title which states that on July 23, 2010, Defendant Griffin assigned the G-BAGS mark to G-Bags, LLC.

Plaintiff has submitted the declaration of Joshua J. Richman who states that on September 3, 2010, he purchased a product from Defendant's website [www.gbags.com](http://www.gbags.com) using the "electronic shopping function located on the website." (ECF No. 25-1 at 1). Richman states in his declaration that on September 13, 2010, Defendant Griffin sent him an email confirming the order and stating that the product had been shipped. *Id.* Richman has attached the email and receipt showing that the order was shipped to his San Diego address. *Id.* at 4-5. Richman has also submitted copies of G-Bag's Facebook page, Twitter messages, and YouTube page containing advertisements for products offered by G-Bags. The Facebook page

contains photo albums of G-Bag products created on September 16, 2009, posts describing the products and providing the website address [www.gbags.com](http://www.gbags.com), and invitations to participate in monthly contests by “following” Defendant’s Twitter account to win free G-Bags products dated from June 11, 2009 through February 10, 2010. *Id.* at 11-17. The Twitter messages include product videos and commercials, links to other websites which carry G-Bags products, links to the website address [www.gbags.com](http://www.gbags.com), and invitations to participate in contests by “following” Defendant’s Twitter account to win free G-Bags products dated from March 25, 2009 through July 4, 2010. *Id.* at 19-170. The YouTube page contains videos of G-Bags products. *Id.* at 172. One video dated January 18, 2009, contains the following statement: “This is our recently released media commercial providing the merits of all our products. [www.gbags.com](http://www.gbags.com) Enjoy.” *Id.* Plaintiff has also attached a letter to the Complaint dated August 26, 2010 and sent to a Carlsbad, California address in which an attorney states that he represent Defendant G-Bags, L.L.C. and states:

It recently came to our attention that your company is marketing and selling a product labeled as the ‘G BAG.’ This product is apparently offered for sale on numerous online retailers ... and available at skate shops at various locations across the United States. Clearly [Plaintiff]<sup>1</sup> cannot continue to market and sell goods in direct competition with our client’s line of identical products under a moniker that is so likely to cause customer confusion with our registered trademark.

(ECF No. 1 at 16).

On a motion to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of establishing personal jurisdiction. *Farmers Ins. Exchange v. Portage La Prairie Mut. Ins. Co.*, 907 F.2d 911, 912 (9th Cir. 1990). Where the motion to dismiss is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts to satisfy this burden. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). While the plaintiff cannot “simply rest on the bare allegations of its complaint,” *Amba Marketing Systems, Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir.

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<sup>1</sup> The letter is addressed to Osiris Shoes, Legal Department, 5601 Palmer Way, Carlsbad, California 92010. Plaintiff California Board Sports, Inc. alleges that this letter was sent to it. Plaintiff is a corporation with its principal place of business located at 5601 Palmer Way, Carlsbad, California 92010.

1 1977), uncontroverted allegations in the complaint must be taken as true. *AT&T v. Campagnie*  
2 *Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). Conflicts between parties over  
3 statements contained in affidavits must be resolved in the plaintiff's favor. *Id.*; *see also*  
4 *Bancroft & Masters, Inc. v. Augusta Nat'l, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) ("Because  
5 the prima facie jurisdictional analysis requires us to accept the plaintiff's allegations as true,  
6 we must adopt [the plaintiff's] version of events for purposes of this appeal."). "[I]f a  
7 plaintiff's proof is limited to written materials, it is necessary only for these materials to  
8 demonstrate facts which support a finding of jurisdiction in order to avoid a motion to  
9 dismiss." *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 (9th  
10 Cir. 1977).

11 The exercise of personal jurisdiction over a nonresident defendant must be authorized  
12 under the state's long-arm statute and must satisfy the due process clause of the United States  
13 Constitution. *Pac. Atl. Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1327 (9th Cir.  
14 1985). California's long-arm statute permits the exercise of personal jurisdiction "on any basis  
15 not inconsistent with the Constitution of this state or the United States." Cal. Civ. Pro. Code  
16 § 410.10. Due process requires that the defendant have such "minimum contacts" with the  
17 forum state that the exercise of jurisdiction over the defendant does not offend "traditional  
18 notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S.  
19 310, 316 (1954). Under due process analysis, a defendant may be subject to either general or  
20 specific personal jurisdiction. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S.  
21 408, 414 (1984).

22 "For general jurisdiction to exist over a nonresident defendant . . . the defendant must  
23 engage in continuous and systematic general business contacts, that approximate physical  
24 presence in the forum state." *Schwartzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801  
25 (9th Cir. 2004) (internal quotations omitted). "This is an exacting standard, as it should be,  
26 because a finding of general jurisdiction permits a defendant to be haled into court in the forum  
27 state to answer for any of its activities anywhere in the world." *Id.*

28 A court exercises specific personal jurisdiction over a defendant where the claim arises

1 out of or has a substantial connection to the defendant's contact with the forum. *Glencore*  
 2 *Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002).

3 The Ninth Circuit analyzes specific jurisdiction according to a three-prong test:

4 (1) The non-resident defendant must purposefully direct his activities or  
 5 consummate some transaction with the forum or resident thereof; or perform  
 6 some act by which he purposefully avails himself of the privilege of conducting  
 7 activities in the forum, thereby invoking the benefits and protections of its laws;

8 (2) the claim must be one which arises out of or relates to the defendant's forum-  
 9 related activities; and

10 (3) the exercise of jurisdiction must comport with fair play and substantial  
 11 justice, i.e. it must be reasonable.

12 *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007).

13 When personal jurisdiction is premised on a defendant's internet activity, courts must  
 14 examine "the level of interactivity and commercial nature of the exchange of information that  
 15 occurs on the Web site." *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997)  
 16 (quotation omitted). "[T]he likelihood that personal jurisdiction can be constitutionally  
 17 exercised is directly proportionate to the nature and quality of commercial activity that an  
 18 entity conducts over the Internet." *Id.* at 419 (quotation omitted); *see also Gator.Com Corp.*  
 19 *v. L.L. Bean, Inc.*, 341 F.3d 1072, 1079 (9th Cir. 2003) ("This test requires both that the party  
 20 in question clearly [do] business over the Internet, and that the internet business contacts with  
 21 the forum state be substantial or continuous and systematic.") (quotation and citation omitted).

22 The Court concludes that Defendant's website [www.gbags.com](http://www.gbags.com) is interactive and  
 23 commercial in nature. Defendant Griffin has advertised extensively over the internet and has  
 24 directed business activities at consumers in California by selling products on the website  
 25 [www.gbags.com](http://www.gbags.com) and shipping merchandise to a San Diego address. In addition, Defendant  
 26 Griffin's limited liability company sent a letter to Plaintiff at a Carlsbad, California address  
 27 requesting Plaintiff to "immediately terminate use of the trademark 'G-BAG' or any  
 28 confusingly similar product name ...." (ECF No. 1 at 16). The Court concludes that Plaintiff  
 has made a prima facie showing of jurisdictional facts.

### III. Motion for a Stay of All Proceedings

Defendant Mark Griffin also seeks "a stay of all proceedings and discovery, or in the

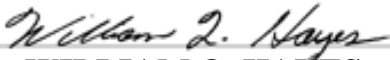
1 alternative for a protective order preventing that any discovery be served on him, pending  
2 resolution of Defendant's Motion to Dismiss for Lack of Jurisdiction ...." (ECF No. 21).

3 This Court has ruled on the Motion for Dismissal of Plaintiff's Complaint Due to Lack  
4 of Personal Jurisdiction filed by Griffin; therefore, a stay pending resolution of the Motion is  
5 not necessary. Defendant Griffin's Motion for a Stay of All Proceedings (ECF No. 21) is  
6 DENIED as moot.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that the Request for Appointment of Counsel for Defendant  
9 G-Bags, LLC filed by Defendant Griffin (ECF No. 19) and the Motion for Dismissal of  
10 Plaintiff's Complaint Due to Lack of Personal Jurisdiction filed by Defendant Griffin (ECF  
11 No. 23) are DENIED. The Motion for a Stay of All Proceedings (ECF No. 21) filed by  
12 Defendant Griffin is DENIED as moot.

13 DATED: February 14, 2011

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15 **WILLIAM Q. HAYES**  
16 United States District Judge  
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